

# **Virginia Interagency Advisory Council on Administrative Dispute Resolution**

## **Minutes**

October 11, 2006 Meeting  
Richmond, Virginia

**Present:** Viola Baskerville, Secretary of Administration and Chair; Mark Rubin, Senior Advisor to the Governor; Kim Farrar, Deputy Secretary of Administration; Claudia Farr, Lead Staff; Joice Conyers; Joe Damico; Ray Davis; Kelley Hellams; Renita Henderson; Connie Hope; Leslie Hutcheson-Prince; John Kirby; Donita King; Steve Marzolf; Carol Mitchell; Barbara Newlin; Marty Parrish; John Gazzola; Bill Price; Ron Regnery; Fred Kozak; and John Settle

The meeting was called to order at approximately 10:00 a.m. and attendees introduced themselves.

**Subcommittee Reports:** Council Subcommittees reported on past accomplishments and recommendations for consideration in the future as follows:

**Data Subcommittee:** Bill Price, Co-Chair, gave the attached report (see Attachment A), noting that fewer agencies responded to the survey issued in late 2005, thus the value of that survey for any detailed comparison was questionable. However, the satisfaction levels of those agencies reporting were consistent with the FY2004 survey, thus reinforcing what we've already learned: state agencies generally view collaborative problem-solving and alternative dispute resolution (ADR) tools as producing more satisfying results than traditional methods, and with less time and expense. It was also recommended (and concurred with by the Council) that the Council review and reconsider the type of data needed in the future.

**Training Subcommittee:** John Settle and Barbara Newlin, Co-Chairs, reviewed their subcommittee's earlier Recommendations to the Council, which are still very relevant (see Attachment B). They recommended (and the Council concurred) that training for agency Coordinators be planned soon. John Settle also indicated that ADR was a means to an end (solving a problem), and not an end itself, and advised that training and communications about ADR should focus on that by looking at what *problems* agencies need to address, and what ADR or other approaches would best help resolve the problems. The possibility of providing interest-based negotiation skills training to line managers and supervisors was also discussed.

**Implementation Subcommittee:** Carol Mitchell, Co-Chair, reported on this subcommittee's work in assisting agencies with policies, guidelines, and pilots (see Council Report to the General Assembly at this web address: <http://leg2.state.va.us/dls/h&sdocs.nsf/4d54200d7e28716385256ec1004f3130/e5395f19f5e57dd185256fcb00574b0c?OpenDocument>). The shared neutrals program was also discussed, and the need to develop high standards for the state's employee ADR practitioners.

**Open Discussion on Future Directions:** Secretary Baskerville thanked Council members for their past achievements and the considerable skills and expertise each will bring to the Council's work in the future. Members participated in an open discussion concerning possible areas of priority and focus for the Council over the next four years. (See Attachment C for list of ideas generated by the group.)

Members were asked to indicate their subcommittee preferences, and the development of dates for quarterly meetings over the next 12 months was discussed. The Council's next meeting will be scheduled for early December if possible, with Subcommittees proceeding with their work before then.

The meeting was adjourned at approximately 12:00 p.m.

**ADR Council Meeting**  
**Data Collection & Analysis Sub-committee**

**October 11, 2006**



2 sets of handouts

- FY04 survey data from last year
- “Snapshots” of FY05 survey data
  - Every data element not represented for couple of reasons:
    - Data is already over a year old
    - Data mostly reinforces what we’ve already learned from previous surveys



Observation

- Agencies seemed less responsive to the FY05 survey;
  - In number of responding agencies, and
  - In the answers to the survey



General comparison of survey results

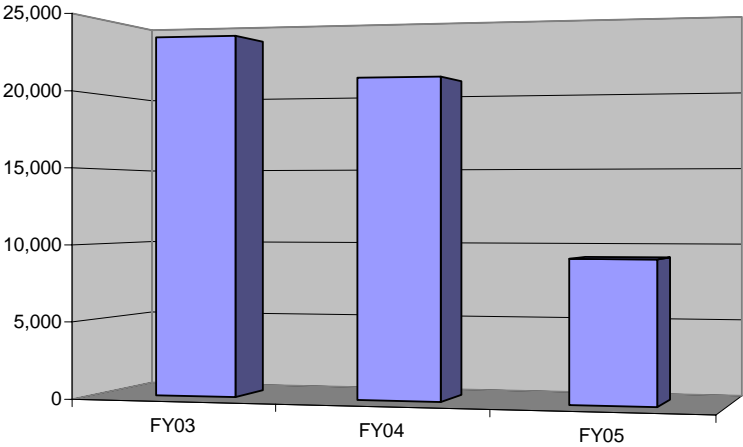
- FY05 survey seems to reinforce the overall value of the ADR process
  - General usage
  - Agency satisfaction
  - Cost effectiveness
- Discount the value of the FY05 survey for any detailed comparison
  - Due to lack of responsiveness



Future surveys

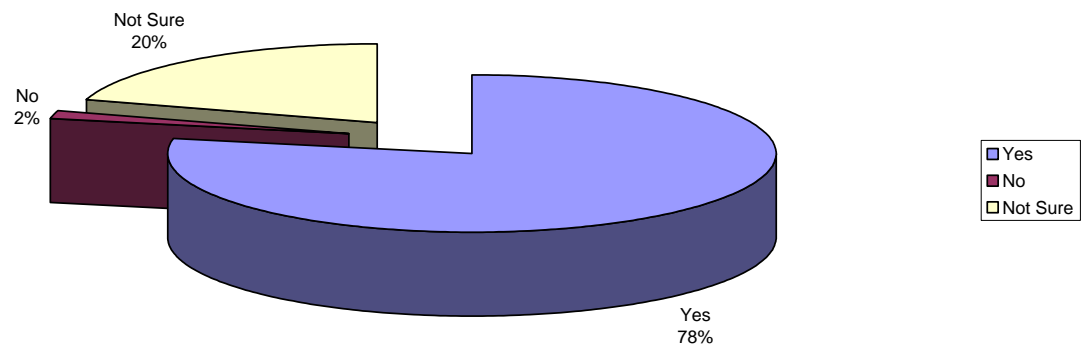
- Don’t need additional surveys of this type; we have...
  - confirmed the value of ADR
  - shown that most agencies are using some form of ADR regularly
- What else do we need to know? (future discussion)

**Number of Instances ADR Used  
All Agencies**

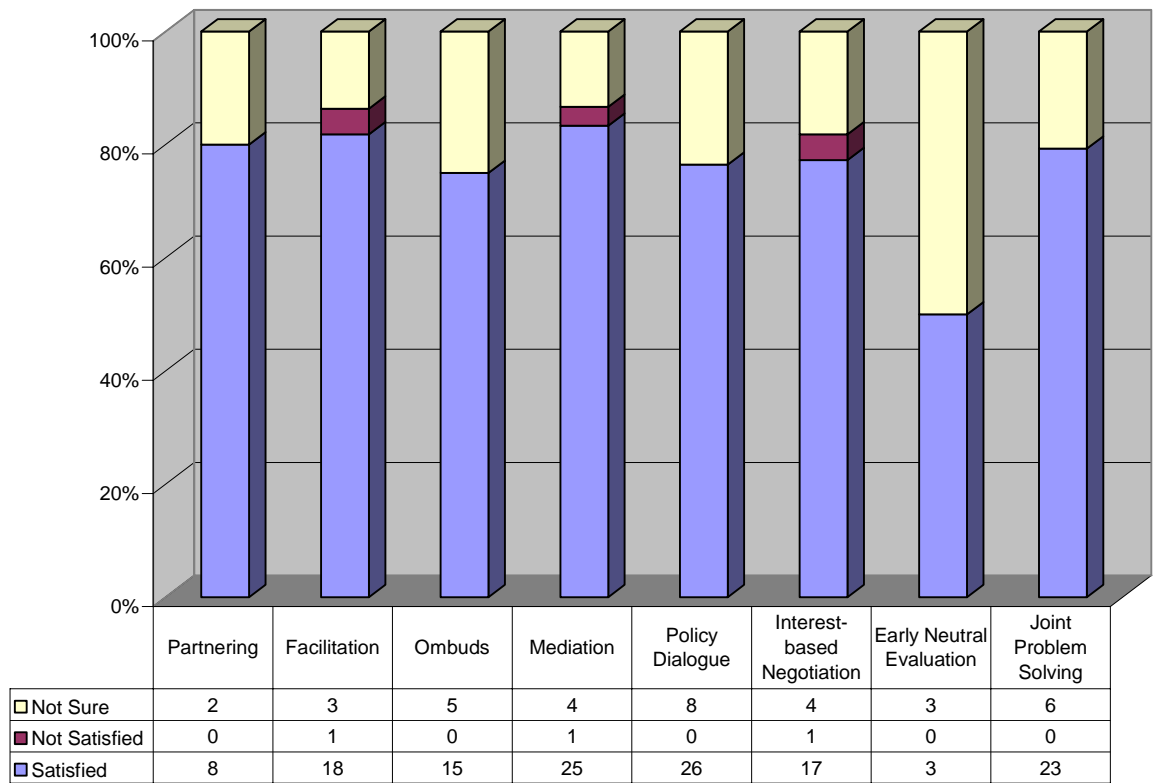


	FY03	FY04	FY05
Series1	23,679	20,792	9199

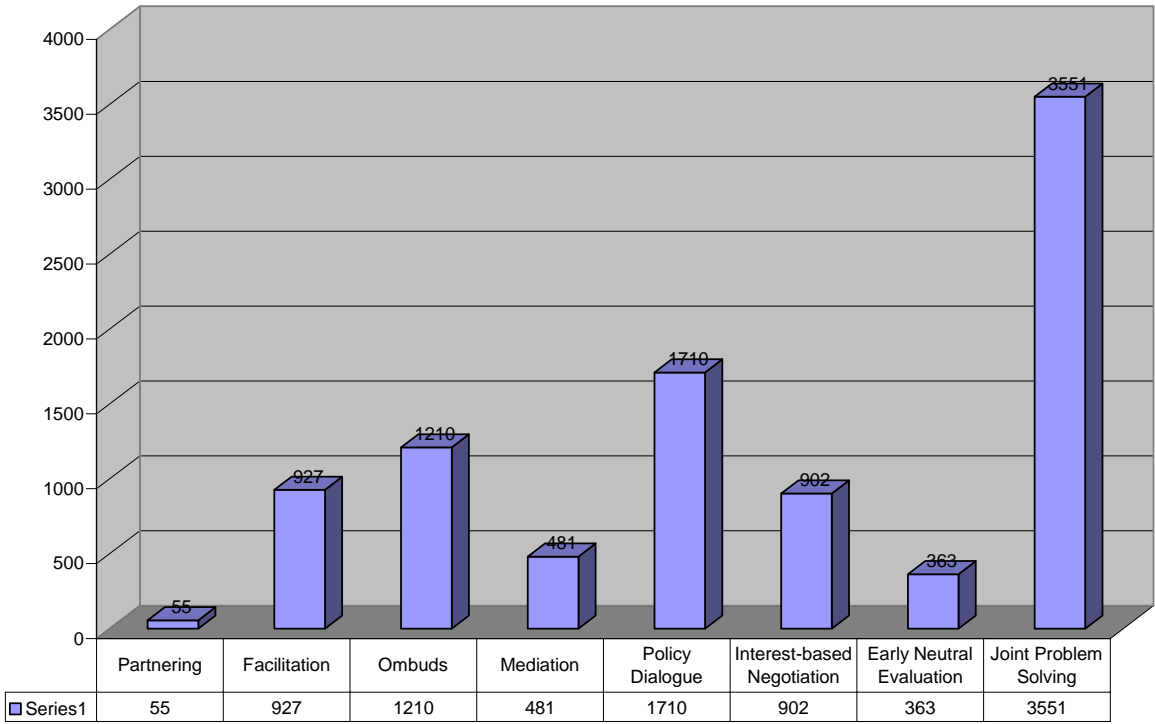
**Were Participants Satisfied Using ADR Process?  
FY05**



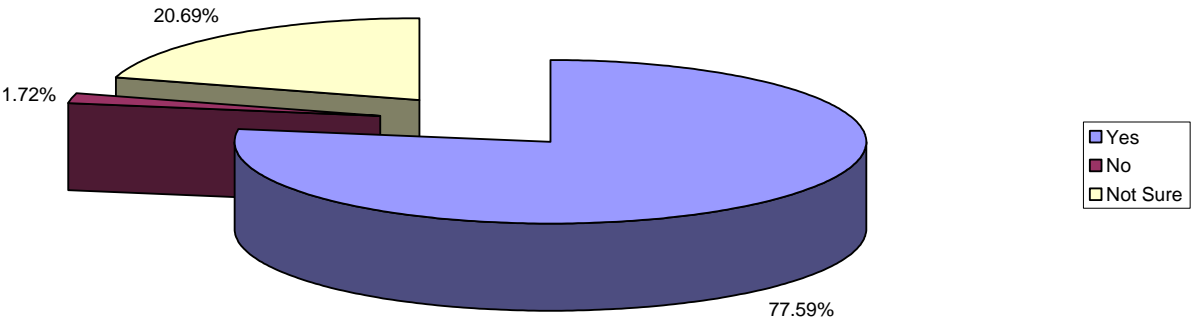
**Satisfied by ADR Type  
FY05**



Use of ADR Processes; by Type  
FY05

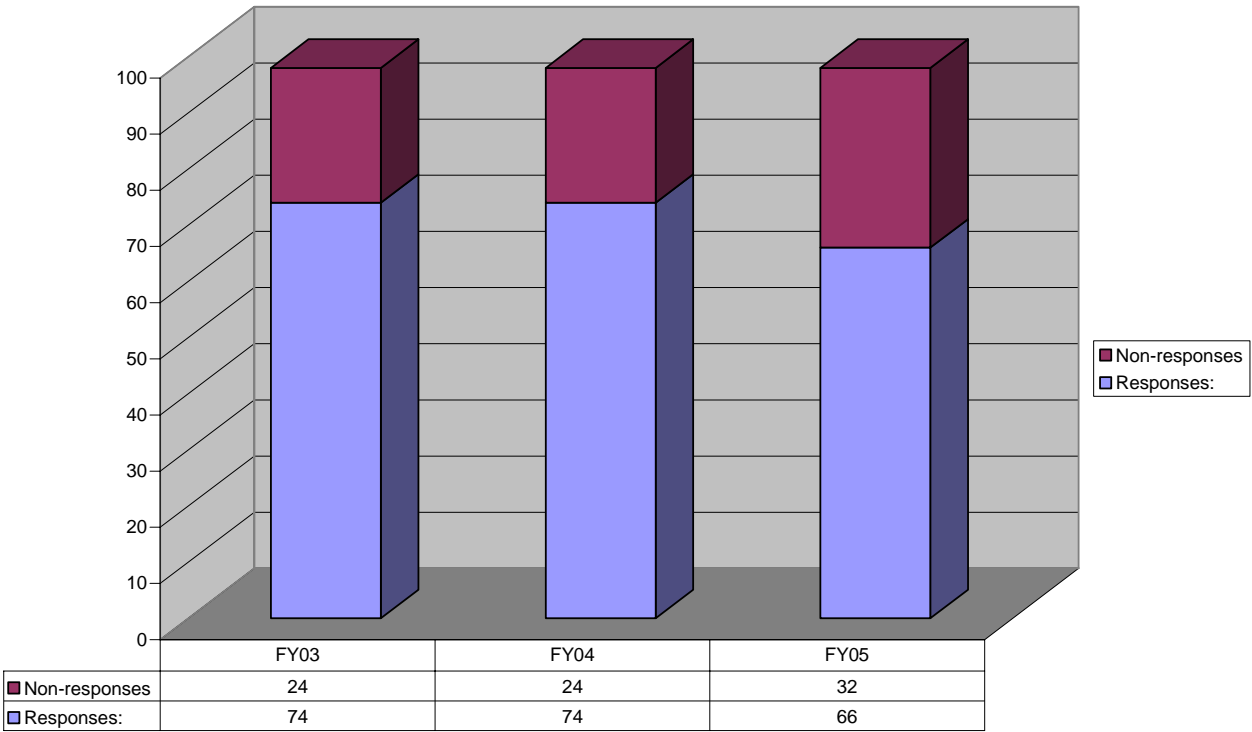


Were Costs Cheaper Using ADR vs. Other Approaches?  
FY05





**Number of Agencies Responding  
Executive Branch & Educational Institutions**



# **Recommendations for a Training and Education Program For the Virginia Administrative Dispute Resolution Act (VADRA)**

## **I. INTRODUCTION**

The Training and Education Committee developed the following recommendations for consideration by the VADRA Council. The Committee believes strongly that if the program is to be successful, there must be support from all levels of management starting with the Governor.

## **II. SIX TARGET AUDIENCES, POTENTIAL INITIATIVES, AND HOW THEY MIGHT BE ENGAGED:**

### **1. Top Executives and Governor's Staff:**

- When: ASAP. Top-level support is critical.
- What: Conduct one or more briefings to familiarize cabinet members and other top leaders on the Act, its purposes and benefits, how it is being implemented, and the Administration's support for the initiative. For expediency, try to "piggy-back" on executive meetings, retreats, or other existing opportunities. Similar briefings for agency heads will be needed. Certain agency heads might be included in cabinet members' briefings. Others might be dealt with in groups in the Secretariats.
- Presenters: Secretary of Administration and/or VADRA Council staff.

***Note: for the next five kinds of training, the Council should consider using one or a few PILOT PROJECTS in a specific secretariat or agency (e.g., in the Secretary of Administration's Secretariat). A pilot can start quickly and on a relatively small scale. It provides an opportunity to learn what works well and what does not. The success of a pilot can then be displayed to bolster efforts elsewhere.***

### **2. Agency Dispute Resolution Coordinators (DRCs):**

This training should include not only named DRCs, but any other persons who will be working with or for a DRC. Three types of training may be needed:

#### **a. Initial training and education for DRCs:**

- When: Begin ASAP after Council plans are developed and Cabinet and agency heads have been briefed.
- What: Ideally, one-day educational and motivational sessions (limited to 30 attendees each) using experiential learning. Subjects to include: the Act and how it is being implemented; principles, kinds and

best practices of alternative dispute resolution; display of peer successes; experiential/role-playing opportunities; introduction to ADR assessment, systems design and implementation using any standard assessment tool developed by the Council's Data Collection and Analysis Committee; overview of model training protocols (and resources) for DRCs to use; expectations of the DRC role; a guideline/model program; brainstorming about potential opportunities for use of ADR; and where to get help. **The Council can develop a model outline and course content for this training.** We suggest that trainees be grouped within Secretariats to provide the benefits of networking and information-sharing among related programs. We also suggest the importance of strongly encouraging, perhaps even requiring, this training.

- Presenters: See IV below.

b. Specific follow-on training for DRCs:

- When: Within a reasonable time following initial training.
- What: Based on input and ideas of the DRCs themselves (who should be encouraged to form their own network), develop one or more sessions to reinforce initial training and idea-sharing among DRCs; to provide further training in organizational developmental techniques related to ADR systems design; and (most important) to provide facilitated information-sharing on barriers encountered and solutions. This training should be encouraged within secretariats where idea-sharing may be particularly beneficial. This specific training, as well as the continuing training below, are important to enhancing "buy-in," motivation, and ownership.
- Presenters: Experienced DRCs plus persons from IV below.

c. On-going education and training for DRCs:

- When: Continuously, after the training above
- What: The Council should encourage on-going training which is continuously motivating and invigorating, not merely the practice of an annual duty. The network of DRCs themselves, with leadership and encouragement of the Council, should develop an on-going training and education program to share experiences, get up-dates on successful techniques for growing ADR, hear speakers from other states, etc.

3. **Managers, Supervisors, and Key Personnel in each Agency:**

- When: Following the DRC initial training (2 (a) above).
- What: Each DRC will help develop and lead one or more half-day to full-day sessions to introduce the ADR initiative to all managers and supervisors within the Agency who might use or have an interest in ADR.

Generally, this training should include the subjects of the DRC's own training (see above), but also should be tailored to the particular culture, operations, experience, and needs of the agency. To the extent feasible, this training should be done in small groups to make it interactive. To reduce costs and assure message consistency on common elements, the Council should consider developing a videotape to use as part of the training. This training has the objective of getting "buy-in" regarding use of ADR. It may also include dispute *prevention* information and techniques, such as interest-based negotiation. The Council might develop one or more outlines and models for this training, which the DRCs would be encouraged to adapt to their agency's particular needs.

- Presenters: It is important that top management of the agency participate in this training to underline the agency's commitment. The DRC should be closely involved in developing and presenting the training, to display his/her role as a core resource and to assure relevance to the agency. The DRC should be encouraged to call on the resources in IV.

#### **4. Attorney General Staff and Agency Legal Counsel:**

- When: Not later than initial training for DRCs. Agency legal personnel might be trained either with AG staff or with the DRCs.
- What: This training should not duplicate what has already been done. In addition to receiving the same general education as DRCs, attorneys can benefit from additional appropriate information, including: more detail on legal aspects of confidentiality; what makes a case appropriate or inappropriate for ADR; interest-based negotiation techniques; management concerns beyond litigation risks; and the special skills and techniques an attorney can use in preparing for and participating in ADR.
- Presenters: Resources in IV, plus peer attorneys and attorneys from the Virginia Bar's ADR groups.

#### **5. Customers and Constituents, Public Information:**

- When: With implementation of each agency's ADR program.
- What: Each DRC might be made responsible for tailoring an educational display for internal and external customers and constituents of his/her agency about the nature and availability of ADR at that agency. This may take the form of brochures, WEB site information, participation in external training events, etc. In addition, the Council itself may wish to consider a general public education program of brochures, public service announcements, etc., to display Virginia's commitment to ADR as part of good government.

**6. Skills Training for Interagency “Shared Neutrals” (i.e., State Employees Who May Perform as Collateral-Duty Mediators or Facilitators):**

- When: In the short run, there should be enough trained mediators, facilitators, etc. within State Government (see suggestion for development of a roster, below) coupled with skilled volunteers to meet initial demands for ADR services. Thus training providers for “shared neutrals” programs need not begin until program planning and implementation call for greater needs than existing sources can provide.
- What: **It is vital to the success of the ADR initiative that only high quality ADR providers be used and developed.** Skills training is intensive; e.g., a basic mediation skills protocol generally requires three or more days, plus follow-up training in particular relevant areas and mentored practice. The Virginia Supreme Court has standards for training and certification of mediators which may provide a baseline for consideration (although this training generally tracks courts’ needs, rather than administrative dispute resolution. There are current national credentialing projects underway which may provide guidance. In the long run, the Council may wish to consider adopting standards for Virginia administrative practice.
- Presenters: See IV below.

**III. ADDITIONAL SUGGESTIONS AND NEEDS:**

- Training and education may be useless unless accompanied by *the commitment of top agency managers* to training and implementation.
- The Council should consider fostering a network of the DRCs to continue and expand training and implementation.
- The Council should continuously identify “success stories” in agencies, of two kinds. First examples of *successful ADR usage* (to display in training). Second, examples of *successful training approaches* (for use by trainers). The DRC network described above could assist with this identification.
- There are at least 80 agencies in nine Secretariats which may need to consider having an ADR program. Each Secretariat should consider how to group trainees within and across agency and Secretariat lines for the most efficient and effective training, and the Council may need to assist with consolidation of training efforts across smaller Secretariats.
- The Council needs to decide on its precise leadership role in developing training and education materials for use by DRCs. **The Council may wish to charge the Training and Education Subcommittee with responsibility for next steps in this area**, in consultation with other knowledgeable individuals and organizations. Among the things we should consider doing (or providing guidance on) are: Summarizing the ADR act for all agencies; developing

training and education outlines, models and materials (including a videotape) for DRC training; refining our identification of particular resources (particularly trainers) in and outside Government to help with development and delivery; identifying training locations and facilities for free or low-cost use by agencies.

- The Council should consider developing a **roster of trained and experienced State ADR practitioners** who have a positive experience record and who are willing to participate in the program.
- The Council needs to consider whether, and how, the Council and/or state agencies will play a role in training and education for local governments and entities. The Council may wish to consider whether to identify certain localities to engage in “pilots” or to “partner” with us in implementation efforts.
- The Council needs to maintain an updated list identifying all DRCs and other state ADR contacts, with methods of contacting them.

#### **IV. TRAINING AND EDUCATION RESOURCES:**

Given the current critical shortage of state resources to support the training and education needs above, it is important to identify sources inside and outside State Government who may be able to provide ideas and training help on a no-cost or low-cost basis. The following suggestions relate to potential sources of such assistance:

- We should make maximum possible use of state personnel who already have knowledge and experience in successful ADR programs (e.g., at the Department of Agriculture and Consumer Services and the Department of Employment Dispute Resolution). There also are many other State employees with personal skills and knowledge in ADR and training (including members of the Council). **The Council should consider cooperating with DRCs, perhaps by using a solicitation or questionnaire, to develop a list of all such individuals, to include their expertise and availability.**
- The Virginia Bar Association has committees involved in ADR which can provide attorneys experienced in use of ADR as speakers, as well as attorney-mediators who are experienced trainers.
- The Virginia Mediation Network includes many highly experienced mediators, facilitators, and trainers who might be willing to help “prime the pump.”
- There are a number of non-profit Community Mediation Centers around Virginia who provide training in ADR subjects.
- Other state agencies and non-profit organizations may be able to help. For example, the Policy Consensus Initiative, a grant-supported non-profit agency, has already provided advice and information on state systems design matters. Several Virginia colleges and universities have programs and professionals who may be able to assist.

## **V. SUMMARY**

If the VADRA program is to be successful, there needs to be a logistical system of implementation in place. As discussed above, training or orientation needs to start with the Cabinet Secretaries and progress to the Agency Heads, Dispute Resolution Coordinators (DRCs), and managers and supervisors. Effective use of ADR will depend on the needs of each agency and the expertise of the DRCs and providers of ADR services.

Training and Education Committee:

Barbara K. Newlin, Co-chair  
John Settle, Co-chair  
Nupa Agarwal  
Alfred G. Bridger, Jr.  
Keith R. Bushey  
Kelly L. Hellams  
Guy W. Horsley, Jr.  
Mark E. Rubin

December 6, 2002

## **Areas of Potential Priority and Focus: October 11, 2006 Council Open Discussion**

- Executive Order No. 33 (SWaM initiative) ¶ 13: a definite -- “The Interagency Advisory Council on ADR, in conjunction with the Dept. of Minority Business Enterprise and the Dept. of General Services shall establish a SWaM (small, women and minority) contract mediation program” offering dispute resolution alternatives for conflicts between executive branch agencies/institutions and small businesses with respect to contract situations.
- Manager/Supervisory training in conflict management/interest-based negotiation
- Training of agency Coordinators, new and existing
- Team up with the Managing Virginia Program (MVP), a core competencies training program at the Dept. of Human Resource Management and provide conflict management modules (Dept. of Employment Dispute Resolution charged with developing MVP conflict management training)
- Identify the state’s areas of financial exposure from a risk management standpoint through study involving possibly JLARC, Dept. of Treasury/Risk Management Division, etc. and concentrate efforts there. Perhaps do a pilot at an agency/institution where exposure may exist.
- Cost of mediation can be high – need to make it affordable
- Need culture change, attitudinal change within agencies toward use of ADR or ombuds type approach to resolve citizen issues, instead of taking adversarial stance
- Need to develop high standards or “best practices” for mediators and other ADR practitioners in the state’s shared pool
- Look to see where use of facilitated workshops have been helpful in achieving goals of statewide initiatives (e.g., donations of land, transportation/land use)
- Consider how ADR approaches can make agencies’ internal processes run smoother
- Consider how ADR can make government less of a thicket for citizens
- Involve localities – they are part of the Virginia ADR Act too
- Legislative use: Pre-Session stakeholder workshops (e.g., farm wineries, birth-related injuries, indigent defense); also, ADR provisions in bills?
- Negotiated rulemaking – to be addressed within Attorney General’s Regulatory Reform Commission?
- Disability/access issues: qualified interpreters, Americans with Disabilities Act, Olmstead Act, Fair Housing Act, use of ADR to resolve issues before law suits are filed
- Get more information out to the agencies during the year, keep ADR on the radar screen with monthly or quarterly updates on success stories, use Leadership Communicate, identify all state government communications vehicles and use where appropriate, emphasize dollars and cents saved or avoided and how ADR



- can help get the job done, without unnecessary delays and unproductive conflict
- Data collections need to capture money and time saved, hard to do without funding; but metrics needed upfront to even get the funding.
  - Get input from Council on Virginia's Future on metrics
  - VITA has side-by-side examples of ADR approach and litigated approach, can share some metrics on that
  - Cost of electronic discovery increasing rapidly, which is a deterrent to litigation and an incentive to use ADR approaches